

In the Senate of the United States,

June 27 (legislative day, June 26), 2003.

Resolved, That the bill from the House of Representatives (H.R. 1474) entitled “An Act to facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation’s payments system, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 (a) *SHORT TITLE.*—*This Act may be cited as the*

3 *“Check Truncation Act of 2003”.*

1 (b) *TABLE OF CONTENTS.—The table of contents for*
 2 *this Act is as follows:*

- Sec. 1. Short title; table of contents.*
- Sec. 2. Findings and purposes.*
- Sec. 3. Definitions.*
- Sec. 4. General provisions governing substitute checks.*
- Sec. 5. Substitute check warranties.*
- Sec. 6. Indemnity.*
- Sec. 7. Expedited recredit for consumers.*
- Sec. 8. Expedited recredit procedures for banks.*
- Sec. 9. Delays in an emergency.*
- Sec. 10. Measure of damages.*
- Sec. 11. Statute of limitations and notice of claim.*
- Sec. 12. Consumer awareness.*
- Sec. 13. Effect on other law.*
- Sec. 14. Regulations.*
- Sec. 15. Study and report on funds availability.*
- Sec. 16. Evaluation and report by the Comptroller General.*
- Sec. 17. Variation by agreement.*
- Sec. 18. Effective date.*

3 **SEC. 2. FINDINGS AND PURPOSES.**

4 (a) *FINDINGS.—Congress finds that—*

5 (1) *the Expedited Funds Availability Act (12*
 6 *U.S.C. 4001 et seq.)—*

7 (A) *directs the Board to consider estab-*
 8 *lishing regulations requiring Federal reserve*
 9 *banks and depository institutions to provide for*
 10 *check truncation, in order to improve the check*
 11 *processing system;*

12 (B) *authorizes the Board to regulate all as-*
 13 *pects of the payment system, including the re-*
 14 *ceipt, payment, collection, and clearing of checks,*
 15 *and related functions of the payment system per-*
 16 *taining to checks; and*

1 (C) directs that the exercise of such author-
 2 ity by the Board shall supersede any State law,
 3 including the Uniform Commercial Code, as in
 4 effect in any State; and

5 (2) check truncation is no less desirable in 2003
 6 for both financial service customers and the financial
 7 services industry, to reduce costs, improve efficiency
 8 in check collections, and expedite funds availability
 9 for account holders than it was in 1987, when Con-
 10 gress first directed the Board to consider establishing
 11 such a process.

12 (b) *PURPOSES.*—The purposes of this Act are—

13 (1) to facilitate check truncation by authorizing
 14 substitute checks;

15 (2) to foster innovation in the check collection
 16 system without mandating receipt of checks in elec-
 17 tronic form; and

18 (3) to improve the overall efficiency of the Na-
 19 tion’s payments system.

20 **SEC. 3. DEFINITIONS.**

21 In this Act, the following definitions shall apply:

22 (1) *ACCOUNT.*—The term “account” means a de-
 23 posit account at a bank.

24 (2) *BANK.*—The term “bank”—

1 (A) means any person located in a State
 2 engaged in the business of banking, including
 3 any depository institution; and

4 (B) includes—

5 (i) any Federal reserve bank;

6 (ii) any Federal home loan bank; and

7 (iii) to the extent that it acts as a
 8 payor—

9 (I) the Treasury of the United
 10 States;

11 (II) the United States Postal
 12 Service;

13 (III) a State government; and

14 (IV) a unit of general local gov-
 15 ernment.

16 (3) *BANKING TERMS.*—

17 (A) *COLLECTING BANK.*—The term “col-
 18 lecting bank” means any bank handling a check
 19 for collection except the paying bank.

20 (B) *DEPOSITARY BANK.*—The term “deposi-
 21 tary bank” means—

22 (i) the first bank to which a check is
 23 transferred, even if such bank is also the
 24 paying bank or the payee; or

1 (ii) a bank to which a check is trans-
 2 ferred for deposit in an account at such
 3 bank, even if the check is physically received
 4 and endorsed first by another bank.

5 (C) *DEPOSITORY INSTITUTION*.—The term
 6 “depository institution” has the same meaning
 7 as in section 19(b)(1)(A) of the Federal Reserve
 8 Act (12 U.S.C. 461(b)(1)(A)).

9 (D) *PAYING BANK*.—The term “paying
 10 bank” means—

11 (i) the bank by which a check is pay-
 12 able, unless the check is payable at or
 13 through another bank and is sent to the
 14 other bank for payment or collection; or

15 (ii) the bank at or through which a
 16 check is payable and to which the check is
 17 sent for payment or collection.

18 (E) *RETURNING BANK*.—

19 (i) *IN GENERAL*.—The term “returning
 20 bank” means a bank (other than the paying
 21 or depository bank) handling a returned
 22 check or notice in lieu of return.

23 (ii) *TREATMENT AS COLLECTING*
 24 *BANK*.—No provision of this Act shall be
 25 construed as affecting the treatment of a re-

1 *turning bank as a collecting bank for pur-*
 2 *poses of section 4–202(b) of the Uniform*
 3 *Commercial Code.*

4 (4) *BOARD.*—*The term “Board” means the*
 5 *Board of Governors of the Federal Reserve System.*

6 (5) *BUSINESS DAY.*—*The term “business day”*
 7 *has the same meaning as in section 602(3) of the Ex-*
 8 *pedited Funds Availability Act (12 U.S.C. 4001(3)).*

9 (6) *CHECK.*—*The term “check”—*

10 (A) *means a draft, payable on demand and*
 11 *drawn on or payable through or at an office of*
 12 *a bank, whether or not negotiable, that is han-*
 13 *dled for forward collection or return, including a*
 14 *substitute check and a travelers check; and*

15 (B) *does not include a noncash item or an*
 16 *item payable in a medium other than United*
 17 *States dollars.*

18 (7) *CONSUMER.*—*The term “consumer” means*
 19 *an individual who—*

20 (A) *with respect to a check handled for for-*
 21 *ward collection, draws the check on a consumer*
 22 *account; or*

23 (B) *with respect to a check handled for re-*
 24 *turn, deposits the check into, or cashes the check*
 25 *against, a consumer account.*

1 (8) *CONSUMER ACCOUNT.*—*The term “consumer*
 2 *account” has the same meaning as in section 602(10)*
 3 *of the Expedited Funds Availability Act (12 U.S.C.*
 4 *4001(10)).*

5 (9) *CUSTOMER.*—*The term “customer” means a*
 6 *person having an account with a bank.*

7 (10) *FORWARD COLLECTION.*—*The term “for-*
 8 *ward collection” means the transfer by a bank of a*
 9 *check to a collecting bank for settlement or the paying*
 10 *bank for payment.*

11 (11) *INDEMNIFYING BANK.*—*The term “indem-*
 12 *nifying bank” means a bank that is providing an in-*
 13 *demnity under section 6 with respect to a substitute*
 14 *check.*

15 (12) *MICR LINE.*—*The term “MICR line” or*
 16 *“magnetic ink character recognition line” means the*
 17 *numbers, which may include the bank routing num-*
 18 *ber, account number, check number, check amount,*
 19 *and other information, that are printed near the bot-*
 20 *tom of a check in magnetic ink in accordance with*
 21 *generally applicable industry standards.*

22 (13) *NONCASH ITEM.*—*The term “noncash item”*
 23 *has the same meaning as in section 602(14) of the*
 24 *Expedited Funds Availability Act (12 U.S.C.*
 25 *4001(14)).*

1 (14) *PERSON*.—The term “person” means a nat-
 2 ural person, corporation, unincorporated company,
 3 partnership, government unit or instrumentality,
 4 trust, or any other entity or organization.

5 (15) *RECONVERTING BANK*.—The term “recon-
 6 verting bank” means—

7 (A) the bank that creates a substitute check;
 8 or

9 (B) if a substitute check is created by a per-
 10 son other than a bank, the first bank that trans-
 11 fers or presents such substitute check.

12 (16) *SUBSTITUTE CHECK*.—The term “substitute
 13 check” means a paper reproduction of the original
 14 check that—

15 (A) contains an image of the front and back
 16 of the original check;

17 (B) bears a MICR line containing all the
 18 information appearing on the MICR line of the
 19 original check, except as provided under gen-
 20 erally applicable industry standards for sub-
 21 stitute checks to facilitate the processing of sub-
 22 stitute checks;

23 (C) conforms, in paper stock, dimension,
 24 and otherwise, with generally applicable indus-
 25 try standards for substitute checks; and

1 (D) is suitable for automated processing in
2 the same manner as the original check.

3 (17) *STATE*.—The term “State” has the same
4 meaning as in section 3(a) of the Federal Deposit In-
5 surance Act (12 U.S.C. 1813(a)).

6 (18) *TRUNCATE*.—The term “truncate” means to
7 remove an original paper check from the check collec-
8 tion or return process and send to a recipient, in lieu
9 of such original paper check, a substitute check or, by
10 agreement, information relating to the original check
11 (including data taken from the MICR line of the
12 original check or an electronic image of the original
13 check), whether with or without subsequent delivery of
14 the original paper check.

15 (19) *UNIFORM COMMERCIAL CODE*.—The term
16 “Uniform Commercial Code” means the Uniform
17 Commercial Code in effect in a State.

18 (20) *UNIT OF GENERAL LOCAL GOVERNMENT*.—
19 The term “unit of general local government” has the
20 same meaning as in section 602(24) of the Expedited
21 Funds Availability Act (12 U.S.C. 4001(24)).

22 (21) *OTHER TERMS*.—Unless the context requires
23 otherwise, terms used in this Act that are not defined
24 in this section shall have the same meanings as in the
25 Uniform Commercial Code.

1 **SEC. 4. GENERAL PROVISIONS GOVERNING SUBSTITUTE**
 2 **CHECKS.**

3 (a) *NO AGREEMENT REQUIRED.*—A person may de-
 4 posit, present, or send for collection or return a substitute
 5 check without an agreement with the recipient, to the extent
 6 that the bank has made the warranties described in section
 7 5 with respect to the substitute check.

8 (b) *LEGAL EQUIVALENCE.*—A substitute check shall be
 9 the legal equivalent of an original check for all purposes,
 10 including any provision of any Federal or State law, and
 11 for all persons, if the substitute check—

12 (1) accurately represents all of the information
 13 on the front and back of the original check as of the
 14 time at which the original check was truncated; and

15 (2) bears the legend: “This is a legal copy of
 16 your check. You can use it the same way you would
 17 use the original check.”.

18 (c) *ENDORSEMENTS.*—A reconverting bank shall en-
 19 sure that the substitute check for which the bank is the re-
 20 converting bank bears all endorsements applied by parties
 21 that previously handled the check (whether in electronic
 22 form or in the form of the original paper check or a sub-
 23 stitute check) for forward collection or return.

24 (d) *IDENTIFICATION OF RECONVERTING BANK.*—A re-
 25 converting bank shall identify itself as a reconverting bank
 26 on any substitute check for which the bank is a reconverting

1 bank, so as to preserve any previous reconverting bank iden-
 2 tifications, in conformance with generally applicable indus-
 3 try standards.

4 (e) *APPLICABLE LAW*.—A substitute check that is the
 5 legal equivalent of the original check under subsection (b)
 6 shall be subject to any provision, including any provision
 7 relating to the protection of consumers, of part 229 of title
 8 12, Code of Federal Regulations (or any successor thereto),
 9 the Uniform Commercial Code, and any other applicable
 10 Federal or State law that would apply if the substitute
 11 check were the original check, to the extent that such provi-
 12 sion of law is not inconsistent with this Act.

13 **SEC. 5. SUBSTITUTE CHECK WARRANTIES.**

14 A bank that transfers, presents, or returns a substitute
 15 check and receives consideration for the check warrants to
 16 the transferee, any subsequent collecting or returning bank,
 17 the depositary bank, the drawee, the drawer, the payee, the
 18 depositor, and any endorser (regardless of whether the war-
 19 rantee receives the substitute check or another paper or elec-
 20 tronic form of the substitute or original check) that—

21 (1) the substitute check meets all the require-
 22 ments for legal equivalence under section 4(b); and

23 (2) no depositary bank, drawee, drawer, or en-
 24 dorser will receive presentment or return of the sub-
 25 stitute check, the original check, or a copy or other

1 *paper or electronic version of the substitute check or*
 2 *original check such that it will be asked to make a*
 3 *payment based on a check it has already paid.*

4 **SEC. 6. INDEMNITY.**

5 (a) *INDEMNITY.*—*A reconverting bank and each bank*
 6 *that subsequently transfers, presents, or returns a substitute*
 7 *check in any electronic or paper form, and receives consid-*
 8 *eration for such transfer, presentment, or return shall in-*
 9 *demnify the transferee, any subsequent collecting or return-*
 10 *ing bank, the depositary bank, the drawee, the drawer, the*
 11 *payee, the depositor, and any endorser, up to the amounts*
 12 *described in subsections (b) and (c), as applicable, to the*
 13 *extent of any loss incurred by any recipient of a substitute*
 14 *check if that loss occurred due to the receipt of a substitute*
 15 *check instead of the original check.*

16 (b) *INDEMNITY AMOUNT.*—

17 (1) *AMOUNT IN EVENT OF BREACH OF WAR-*
 18 *RANTY.*—*The amount of the indemnity under sub-*
 19 *section (a) shall be the amount of any loss (including*
 20 *costs and reasonable attorney fees and other expenses*
 21 *of representation) proximately caused by a breach of*
 22 *a warranty established under section 5.*

23 (2) *AMOUNT IN ABSENCE OF BREACH OF WAR-*
 24 *RANTY.*—*In the absence of a breach of a warranty es-*

1 *tablished under section 5, the amount of the indem-*
 2 *nity under subsection (a) shall be the sum of—*

3 *(A) the amount of any loss, up to the*
 4 *amount of the substitute check; and*

5 *(B) interest and expenses (including costs*
 6 *and reasonable attorney fees and other expenses*
 7 *of representation).*

8 *(c) COMPARATIVE NEGLIGENCE.—*

9 *(1) IN GENERAL.—If a loss under subsection (a)*
 10 *results in whole or in part from the negligence or fail-*
 11 *ure to act in good faith on the part of an indemnified*
 12 *party, then the indemnification of that party under*
 13 *this section shall be reduced in proportion to the*
 14 *amount of negligence or bad faith attributable to that*
 15 *party.*

16 *(2) RULE OF CONSTRUCTION.—Nothing in this*
 17 *subsection reduces the rights of a consumer or any*
 18 *other person under the Uniform Commercial Code or*
 19 *other applicable provision of Federal or State law.*

20 *(d) EFFECT OF PRODUCING ORIGINAL CHECK OR SUB-*
 21 *STITUTE CHECK.—*

22 *(1) IN GENERAL.—If the indemnifying bank pro-*
 23 *duces the original check or a copy of the original*
 24 *check (including an image or a substitute check) that*
 25 *accurately represents all of the information on the*

1 *front and back of the original check (as of the time*
 2 *at which the original check was truncated), or is oth-*
 3 *erwise sufficient to determine whether or not a claim*
 4 *is valid, the indemnifying bank shall—*

5 *(A) be liable under this section only for*
 6 *losses covered by the indemnity that are incurred*
 7 *up to the time that the original check or copy is*
 8 *provided to the indemnified party; and*

9 *(B) have a right to the return of any funds*
 10 *it has paid under the indemnity in excess of*
 11 *those losses.*

12 *(2) COORDINATION OF INDEMNITY WITH IMPLIED*
 13 *WARRANTY.—The production of the original check,*
 14 *substitute check, or copy under paragraph (1) by an*
 15 *indemnifying bank shall not absolve the bank from*
 16 *any liability on a warranty established under this*
 17 *Act or any other provision of law.*

18 *(e) SUBROGATION OF RIGHTS.—*

19 *(1) IN GENERAL.—Each indemnifying bank shall*
 20 *be subrogated to the rights of any indemnified party*
 21 *to the extent of the indemnity.*

22 *(2) RECOVERY UNDER WARRANTY.—A bank that*
 23 *indemnifies a party under this section may attempt*
 24 *to recover from another party based on a warranty*
 25 *or other claim.*

1 (3) *DUTY OF INDEMNIFIED PARTY.*—*Each in-*
 2 *demnified party shall have a duty to comply with all*
 3 *reasonable requests for assistance from an indem-*
 4 *nifying bank in connection with any claim that the*
 5 *indemnifying bank brings against a warrantor or*
 6 *other party related to a check that forms the basis for*
 7 *the indemnification.*

8 **SEC. 7. EXPEDITED RECREDIT FOR CONSUMERS.**

9 (a) *RECREDIT CLAIMS.*—

10 (1) *IN GENERAL.*—*A consumer may make a*
 11 *claim for expedited recredit from the bank that holds*
 12 *the account of the consumer with respect to a sub-*
 13 *stitute check, if the consumer asserts in good faith*
 14 *that—*

15 (A) *the bank charged the consumer account*
 16 *for a substitute check that was provided to the*
 17 *consumer;*

18 (B) *either—*

19 (i) *the check was not properly charged*
 20 *to the consumer account; or*

21 (ii) *the consumer has a warranty*
 22 *claim with respect to such substitute check;*

23 (C) *the consumer suffered a resulting loss;*

24 *and*

1 (D) the production of the original check or
 2 a better copy of the original check is necessary
 3 to determine the validity of any claim described
 4 in subparagraph (B).

5 (2) 40-DAY PERIOD.—Any claim under para-
 6 graph (1) with respect to a consumer account may be
 7 submitted by a consumer before the end of the 40-day
 8 period beginning on the later of—

9 (A) the date on which the financial institu-
 10 tion mails or delivers, by a means agreed to by
 11 the consumer, the periodic statement of account
 12 for such account which contains information
 13 concerning the transaction giving rise to the
 14 claim; or

15 (B) the date on which the substitute check
 16 is made available to the consumer.

17 (3) EXTENSION UNDER EXTENUATING CIR-
 18 CUMSTANCES.—If the ability of the consumer to sub-
 19 mit the claim within the 40-day period under para-
 20 graph (2) is delayed due to extenuating cir-
 21 cumstances, including extended travel or the illness of
 22 the consumer, the 40-day period shall be extended by
 23 a reasonable amount of time.

24 (b) PROCEDURES FOR CLAIMS.—

1 (1) *IN GENERAL.*—*To make a claim for an expedited recredit under subsection (a) with respect to a*
 2 *substitute check, the consumer shall provide to the*
 3 *bank that holds the account of such consumer—*

5 (A) *a description of the claim, including an*
 6 *explanation of—*

7 (i) *why the substitute check was not*
 8 *properly charged to the subject consumer ac-*
 9 *count; or*

10 (ii) *the warranty claim with respect to*
 11 *such check;*

12 (B) *a statement that the consumer suffered*
 13 *a loss and an estimate of the amount of the loss;*

14 (C) *the reason why production of the origi-*
 15 *nal check or a better copy of the original check*
 16 *is necessary to determine the validity of the*
 17 *charge to the subject consumer account or the*
 18 *warranty claim; and*

19 (D) *sufficient information to identify the*
 20 *substitute check and to investigate the claim.*

21 (2) *CLAIM IN WRITING.*—

22 (A) *IN GENERAL.*—*The bank holding the*
 23 *consumer account that is the subject of a claim*
 24 *by the consumer under subsection (a) may, in*
 25 *the discretion of the bank, require the consumer*

1 to submit the information required under para-
2 graph (1) in writing.

3 (B) *MEANS OF SUBMISSION.*—A bank that
4 requires a submission of information under sub-
5 paragraph (A) may permit the consumer to
6 make the submission electronically, if the con-
7 sumer has agreed to communicate with the bank
8 in that manner.

9 (c) *REREDIT TO CONSUMER.*—

10 (1) *CONDITIONS FOR REREDIT.*—The bank shall
11 recredit a consumer account in accordance with para-
12 graph (2) for the amount of a substitute check that
13 was charged against the consumer account, if—

14 (A) a consumer submits a claim to the bank
15 with respect to that substitute check that meets
16 the requirement of subsection (b); and

17 (B) the bank has not—
18 (i) provided to the consumer—

19 (I) the original check; or

20 (II) a copy of the original check
21 (including an image or a substitute
22 check) that accurately represents all of
23 the information on the front and back
24 of the original check, as of the time at

1 *which the original check was trun-*
 2 *cated; and*

3 *(ii) demonstrated to the consumer that*
 4 *the substitute check was properly charged to*
 5 *the consumer account.*

6 (2) *TIMING OF RECREDIT.—*

7 (A) *IN GENERAL.—The bank shall recredit*
 8 *the subject consumer account for the amount de-*
 9 *scribed in paragraph (1) not later than the end*
 10 *of the business day following the business day on*
 11 *which the bank determines the claim of the con-*
 12 *sumer is valid.*

13 (B) *RECREDIT PENDING INVESTIGATION.—*
 14 *If the bank has not determined that the claim of*
 15 *the consumer is valid before the end of the 10th*
 16 *business day after the business day on which the*
 17 *consumer submitted the claim, the bank shall re-*
 18 *credit the subject consumer account for—*

19 (i) *the lesser of the amount of the sub-*
 20 *stitute check that was charged against the*
 21 *consumer account, or \$2,500, together with*
 22 *interest if the account is an interest-bearing*
 23 *account, not later than the end of such 10th*
 24 *business day; and*

1 (ii) the remaining amount of the sub-
 2 stitute check that was charged against the
 3 consumer account, if any, together with in-
 4 terest if the account is an interest-bearing
 5 account, not later than the 45th calendar
 6 day following the business day on which the
 7 consumer submits the claim.

8 (d) AVAILABILITY OF RECREDIT.—

9 (1) NEXT BUSINESS DAY AVAILABILITY.—Except
 10 as provided in paragraph (2), a bank that provides
 11 a recredit to a consumer account under subsection (c)
 12 shall make the recredited funds available for with-
 13 drawal by the consumer by the start of the next busi-
 14 ness day after the business day on which the bank re-
 15 credits the consumer account under subsection (c).

16 (2) SAFEGUARD EXCEPTIONS.—A bank may
 17 delay availability to a consumer of a recredit pro-
 18 vided under subsection (c)(2)(B)(i) until the start of
 19 either the business day following the business day on
 20 which the bank determines that the claim of the con-
 21 sumer is valid, or the 45th calendar day following the
 22 business day on which the consumer submits a claim
 23 for such recredit in accordance with subsection (b),
 24 whichever is earlier, in any of the following cir-
 25 cumstances:

1 (A) *NEW ACCOUNTS.*—*The claim is made*
2 *during the 30-day period beginning on the busi-*
3 *ness day on which the consumer account was es-*
4 *tablished.*

5 (B) *REPEATED OVERDRAFTS.*—*Without re-*
6 *gard to the charge that is the subject of the claim*
7 *for which the recredit was made—*

8 (i) *on 6 or more business days during*
9 *the 6-month period ending on the date on*
10 *which the consumer submits the claim, the*
11 *balance in the consumer account was nega-*
12 *tive or would have become negative if checks*
13 *or other charges to the account had been*
14 *paid; or*

15 (ii) *on 2 or more business days during*
16 *such 6-month period, the balance in the con-*
17 *sumer account was negative or would have*
18 *become negative in the amount of \$5,000 or*
19 *more if checks or other charges to the ac-*
20 *count had been paid.*

21 (C) *PREVENTION OF FRAUD LOSSES.*—*The*
22 *bank has reasonable cause to believe that the*
23 *claim is fraudulent, based on facts (other than*
24 *the fact that the check in question or the con-*
25 *sumer is of a particular class) that would cause*

1 *a well-grounded belief in the mind of a reason-*
 2 *able person that the claim is fraudulent.*

3 (3) *OVERDRAFT FEES.*—*No bank that, in accord-*
 4 *ance with paragraph (2), delays the availability of a*
 5 *recredit under subsection (c) to any consumer account*
 6 *may impose any overdraft fees with respect to drafts*
 7 *drawn by the consumer on such recredited amount be-*
 8 *fore the end of the 5-day period beginning on the date*
 9 *on which notice of the delay in the availability of*
 10 *such amount is sent by the bank to the consumer.*

11 (e) *REVERSAL OF RECREDIT.*—*A bank may reverse a*
 12 *recredit to a consumer account if the bank—*

13 (1) *determines that a substitute check for which*
 14 *the bank recredited a consumer account under sub-*
 15 *section (c) was in fact properly charged to the con-*
 16 *sumer account; and*

17 (2) *notifies the consumer in accordance with sub-*
 18 *section (f)(3).*

19 (f) *NOTICE TO CONSUMER.*—

20 (1) *NOTICE IF CONSUMER CLAIM NOT VALID.*—*If*
 21 *a bank determines that a substitute check subject to*
 22 *the claim of a consumer under this section was in fact*
 23 *properly charged to the consumer account, the bank*
 24 *shall send to the consumer, not later than the business*

1 *day following the business day on which the bank*
2 *makes the determination—*

3 *(A) the original check or a copy of the origi-*
4 *nal check (including an image or a substitute*
5 *check) that—*

6 *(i) accurately represents all of the in-*
7 *formation on the front and back of the*
8 *original check (as of the time at which the*
9 *original check was truncated); or*

10 *(ii) is otherwise sufficient to determine*
11 *whether or not the claim of the consumer is*
12 *valid; and*

13 *(B) an explanation of the basis for the de-*
14 *termination by the bank that the substitute check*
15 *was properly charged, including a statement that*
16 *the consumer may request copies of any informa-*
17 *tion or documents on which the bank relied in*
18 *making the determination.*

19 *(2) NOTICE OF RECREDIT.—If a bank recredits a*
20 *consumer account under subsection (c), the bank shall*
21 *send to the consumer, not later than the business day*
22 *following the business day on which the bank makes*
23 *the recredit, a notice of—*

24 *(A) the amount of the recredit; and*

1 (B) the date on which the recredited funds
2 will be available for withdrawal.

3 (3) NOTICE OF REVERSAL OF RECREDIT.—In ad-
4 dition to the notice required under paragraph (1), if
5 a bank reverses a recredited amount under subsection
6 (e), the bank shall send to the consumer, not later
7 than the business day following the business day on
8 which the bank reverses the recredit, a notice of—

9 (A) the amount of the reversal; and

10 (B) the date on which the recredit was re-
11 versed.

12 (4) MODE OF DELIVERY.—A notice described in
13 this subsection shall be delivered by United States
14 mail or by any other means through which the con-
15 sumer has agreed to receive account information.

16 (g) OTHER CLAIMS NOT AFFECTED.—Providing a re-
17 credit in accordance with this section shall not absolve the
18 bank from liability for a claim made under any other pro-
19 vision of law, such as a claim for wrongful dishonor under
20 the Uniform Commercial Code, or from liability for addi-
21 tional damages under section 6 or 10.

22 (h) SCOPE OF APPLICATION.—This section shall only
23 apply to customers who are consumers.

24 **SEC. 8. EXPEDITED RECREDIT PROCEDURES FOR BANKS.**

25 (a) RECREDIT CLAIMS.—

1 (1) *IN GENERAL.*—A bank may make a claim
 2 against an indemnifying bank for expedited recredit
 3 for which that bank is indemnified, if—

4 (A) the claimant bank (or a bank that the
 5 claimant bank has indemnified) has received a
 6 claim for expedited recredit from a consumer
 7 under section 7 with respect to a substitute
 8 check, or would have been subject to such a claim
 9 had the subject consumer account been charged;

10 (B) the claimant bank has suffered a result-
 11 ing loss or is obligated to recredit the consumer
 12 account under section 7 with respect to such sub-
 13 stitute check; and

14 (C) production of the original check or a
 15 better copy of the original check is necessary to
 16 determine the validity of the charge to the con-
 17 sumer account or any warranty claim connected
 18 with such substitute check.

19 (2) *120-DAY PERIOD.*—Any claim under para-
 20 graph (1) may be submitted by the claimant bank to
 21 an indemnifying bank before the end of the 120-day
 22 period beginning on the date of the transaction that
 23 gave rise to the claim.

24 (b) *PROCEDURES FOR CLAIMS.*—

1 (1) *IN GENERAL.*—*To make a claim under sub-*
 2 *section (a) for an expedited recredit relating to a sub-*
 3 *stitute check, the claimant bank shall send to the in-*
 4 *demnifying bank—*

5 (A) *a description of—*

6 (i) *the claim, including an explanation*
 7 *of why the substitute check cannot be prop-*
 8 *erly charged to the consumer account; or*

9 (ii) *the warranty claim;*

10 (B) *a statement that the claimant bank has*
 11 *suffered a loss or is obligated to recredit the sub-*
 12 *ject consumer account under section 7, together*
 13 *with an estimate of the amount of the loss or re-*
 14 *credit;*

15 (C) *the reason why production of the origi-*
 16 *nal check or a better copy of the original check*
 17 *is necessary to determine the validity of the*
 18 *charge to the consumer account or the warranty*
 19 *claim; and*

20 (D) *information sufficient for the indem-*
 21 *nifying bank to identify the substitute check and*
 22 *to investigate the claim.*

23 (2) *REQUIREMENTS RELATING TO COPIES OF*
 24 *SUBSTITUTE CHECKS.*—*If the information submitted*
 25 *by a claimant bank pursuant to paragraph (1) in*

1 connection with a claim for an expedited recredit in-
 2 cludes a copy of any substitute check for which any
 3 such claim is made, the claimant bank shall take rea-
 4 sonable steps to ensure that any such copy cannot
 5 be—

6 (A) mistaken for the legal equivalent of the
 7 check under section 4(b); or

8 (B) sent or handled by any bank, including
 9 the indemnifying bank, as a forward collection
 10 or returned check.

11 (3) CLAIM IN WRITING.—

12 (A) IN GENERAL.—An indemnifying bank
 13 may, in the discretion of the bank, require the
 14 claimant bank to submit the information re-
 15 quired by paragraph (1) in writing, including a
 16 copy of the written or electronically submitted
 17 claim, if any, that the consumer provided in ac-
 18 cordance with section 7(b).

19 (B) MEANS OF SUBMISSION.—An indem-
 20 nifying bank that requires a submission of infor-
 21 mation under subparagraph (A) may permit the
 22 claimant bank to make the submission electroni-
 23 cally, if the claimant bank has agreed to commu-
 24 nicate with the indemnifying bank in that man-
 25 ner.

1 (c) *REREDIT BY INDEMNIFYING BANK.*—

2 (1) *PROMPT ACTION REQUIRED.*—Not later than
3 10 business days after the business day on which an
4 indemnifying bank receives a claim under subsection
5 (a) from a claimant bank with respect to a substitute
6 check, the indemnifying bank shall—

7 (A) provide, to the claimant bank, the origi-
8 nal check (with respect to such substitute check)
9 or a copy of the original check (including an
10 image or a substitute check) that—

11 (i) accurately represents all of the in-
12 formation on the front and back of the
13 original check (as of the time at which the
14 original check was truncated); or

15 (ii) is otherwise sufficient to determine
16 that the claim of the bank is not valid;

17 (B) recredit the claimant bank for the
18 amount of the claim up to the amount of the sub-
19 stitute check, plus interest if applicable; or

20 (C) provide information to the claimant
21 bank as to why the indemnifying bank is not ob-
22 ligated to comply with subparagraph (A) or (B).

23 (2) *REREDIT DOES NOT ABROGATE OTHER LI-*
24 *ABILITIES.*—Providing a recredit under this sub-
25 section to a claimant bank with respect to a substitute

1 *check shall not absolve the indemnifying bank from li-*
 2 *ability for claims brought under any other law or*
 3 *from additional damages under section 6 or 10 with*
 4 *respect to such check.*

5 (3) *REFUND TO INDEMNIFYING BANK.—If a*
 6 *claimant bank reverses, in accordance with section*
 7 *7(e), a recredit previously made to a consumer ac-*
 8 *count under section 7(c), or otherwise receives a credit*
 9 *or recredit with regard to such substitute check, the*
 10 *claimant bank shall promptly refund to any indem-*
 11 *nifying bank any amount previously advanced by the*
 12 *indemnifying bank in connection with such substitute*
 13 *check.*

14 (d) *PRODUCTION OF ORIGINAL CHECK OR A SUFFI-*
 15 *ICIENT COPY GOVERNED BY SECTION 6(d).—If the indem-*
 16 *nifying bank provides the claimant bank with the original*
 17 *check or a copy of the original check (including an image*
 18 *or a substitute check) under subsection (c)(1)(A) of this sec-*
 19 *tion, section 6(d) shall govern any right of the indemnifying*
 20 *bank to any repayment of any funds that the indemnifying*
 21 *bank has recredited to the claimant bank pursuant to sub-*
 22 *section (c).*

23 **SEC. 9. DELAYS IN AN EMERGENCY.**

24 *Delay by a bank beyond the time limits prescribed or*
 25 *permitted by this Act is excused if the delay is caused by*

1 *interruption of communication or computer facilities, sus-*
 2 *pension of payments by another bank, war, emergency con-*
 3 *ditions, failure of equipment, or other circumstances beyond*
 4 *the control of a bank, and if the bank uses such diligence*
 5 *as the circumstances require.*

6 **SEC. 10. MEASURE OF DAMAGES.**

7 (a) *LIABILITY.*—

8 (1) *IN GENERAL.*—*Except as provided in section*
 9 *6, any person who, in connection with a substitute*
 10 *check, breaches any warranty under this Act or fails*
 11 *to comply with any requirement imposed by or regu-*
 12 *lation prescribed pursuant to this Act with respect to*
 13 *any other person shall be liable to such person in an*
 14 *amount equal to the sum of—*

15 (A) *the lesser of—*

16 (i) *the amount of the loss suffered by*
 17 *the other person as a result of the breach or*
 18 *failure; or*

19 (ii) *the amount of the substitute check;*

20 *and*

21 (B) *interest and expenses (including costs*
 22 *and reasonable attorney fees and other expenses*
 23 *of representation) related to the substitute check.*

24 (2) *OFFSET OF RECREDITS.*—*The amount of*
 25 *damages that any person receives under paragraph*

1 (1), if any, shall be reduced by the amount that the
 2 claimant receives and retains as a recredit under sec-
 3 tion 7 or 8, if any.

4 (b) *COMPARATIVE NEGLIGENCE*.—

5 (1) *IN GENERAL*.—If a person incurs damages
 6 that resulted in whole or in part from the negligence
 7 or failure of that person to act in good faith, then the
 8 amount of any liability due to that person under sub-
 9 section (a) shall be reduced in proportion to the
 10 amount of negligence or bad faith attributable to that
 11 person.

12 (2) *RULE OF CONSTRUCTION*.—Nothing in this
 13 subsection reduces the rights of a consumer or any
 14 other person under the Uniform Commercial Code or
 15 other applicable provision of Federal or State law.

16 **SEC. 11. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

17 (a) *ACTIONS UNDER THIS ACT*.—

18 (1) *IN GENERAL*.—An action to enforce a claim
 19 under this Act may be brought in any United States
 20 district court, or in any other court of competent ju-
 21 risdiction, before the end of the 1-year period begin-
 22 ning on the date on which the cause of action accrues.

23 (2) *ACCRUAL*.—For purposes of paragraph (1), a
 24 cause of action accrues as of the date on which the in-
 25 jured party first learns, or by which such person rea-

1 sonably should have learned, of the facts and cir-
 2 cumstances giving rise to the cause of action.

3 (b) *NOTICE OF CLAIMS REQUIRED.*—Unless a person
 4 gives notice of a claim to the indemnifying or warranting
 5 bank, not later than 30 days after the person has reason
 6 to know of the claim and the identity of the indemnifying
 7 or warranting bank, the indemnifying or warranting bank
 8 is discharged from liability in an action to enforce a claim
 9 under this Act, to the extent of any loss caused by the delay
 10 in giving notice of the claim.

11 (c) *NOTICE OF CLAIM BY CONSUMER.*—A timely claim
 12 by a consumer under section 7 for expedited recredit con-
 13 stitutes timely notice of a claim by the consumer for pur-
 14 poses of subsection (b).

15 **SEC. 12. CONSUMER AWARENESS.**

16 (a) *IN GENERAL.*—During the 3-year period beginning
 17 on the effective date of this Act, each bank shall provide
 18 to each consumer that is a customer of the bank, in accord-
 19 ance with subsection (b), a brief notice about substitute
 20 checks that describes—

21 (1) *how a substitute check is the legal equivalent*
 22 *of an original check for all purposes, including any*
 23 *provision of any Federal or State law, and for all*
 24 *persons, if the substitute check—*

1 (A) accurately represents all of the informa-
 2 tion on the front and back of the original check
 3 as of the time at which the original check was
 4 truncated; and

5 (B) bears the legend: “This is a legal copy
 6 of your check. You can use it in the same way
 7 you would use the original check.”; and

8 (2) the consumer recredit rights established
 9 under section 7 when a consumer believes in good
 10 faith that a substitute check was not properly charged
 11 to the account of the consumer.

12 (b) DISTRIBUTION.—

13 (1) IN GENERAL.—The notice required by sub-
 14 section (a) shall be provided—

15 (A) to each consumer that is a customer of
 16 the bank as of the effective date of this Act, and
 17 that receives original checks or substitute checks
 18 along with periodic account statements, not later
 19 than together with the first regularly scheduled
 20 communication with the customer after the effec-
 21 tive date of this Act;

22 (B) at the time at which a customer rela-
 23 tionship is initiated, if such relationship is initi-
 24 ated on or after the effective date of this Act and
 25 such customer will receive original checks or sub-

1 *stitute checks along with periodic account state-*
 2 *ments; and*

3 *(C) to each customer of the bank that re-*
 4 *quests a copy of a check and receives a substitute*
 5 *check, at the time of the request.*

6 *(2) MODE OF DELIVERY.—A bank may provide*
 7 *the notices required by this subsection by United*
 8 *States mail, or by any other means through which the*
 9 *consumer has agreed to receive account information.*
 10 *(c) MODEL LANGUAGE.—*

11 *(1) IN GENERAL.—Not later than 9 months after*
 12 *the date of enactment of this Act, the Board shall pub-*
 13 *lish model forms and clauses that a depository insti-*
 14 *tution may use to describe each of the elements re-*
 15 *quired by subsection (a).*

16 *(2) SAFE HARBOR.—A bank shall be treated as*
 17 *being in compliance with the requirements of sub-*
 18 *section (a) if the substitute check notice of the bank*
 19 *uses a model form or clause published by the Board,*
 20 *and such model form or clause accurately describes*
 21 *the policies and practices of the bank. A bank may*
 22 *delete any information in the model form or clause*
 23 *that is not required by this Act, or rearrange the for-*
 24 *mat of such form.*

1 (3) *USE OF MODEL LANGUAGE NOT REQUIRED.*—

2 *This section shall not be construed as requiring any*
 3 *bank to use a model form or clause that the Board*
 4 *prepares under this subsection.*

5 **SEC. 13. EFFECT ON OTHER LAW.**

6 *This Act shall supersede any provision of Federal or*
 7 *State law, including the Uniform Commercial Code, that*
 8 *is inconsistent with this Act, but only to the extent of the*
 9 *inconsistency.*

10 **SEC. 14. REGULATIONS.**

11 *The Board may prescribe such regulations as it deems*
 12 *necessary to implement, prevent circumvention or evasion*
 13 *of, or facilitate compliance with the provisions of this Act.*

14 **SEC. 15. STUDY AND REPORT ON FUNDS AVAILABILITY.**

15 (a) *STUDY.*—*In order to evaluate the implementation*
 16 *and the impact of this Act, the Board shall conduct a study*
 17 *of—*

18 (1) *the percentage of total checks cleared in*
 19 *which the paper check is not returned to the paying*
 20 *bank;*

21 (2) *the extent to which financial institutions*
 22 *make funds available to consumers for local and*
 23 *nonlocal checks prior to the expiration of maximum*
 24 *hold periods;*

1 (3) *the length of time within which depositary*
 2 *banks learn of the nonpayment of local and nonlocal*
 3 *checks;*

4 (4) *the increase or decrease in check-related losses*
 5 *over the study period; and*

6 (5) *the appropriateness of the time periods and*
 7 *amount limits applicable under sections 603 and 604*
 8 *of the Expedited Funds Availability Act, as in effect*
 9 *on the date of enactment of this Act.*

10 (b) *REPORT TO CONGRESS.*—Not later than 30 months
 11 *after the effective date of this Act, the Board shall submit*
 12 *a report to Congress concerning the results of the study con-*
 13 *ducted under this section, together with any recommenda-*
 14 *tions for legislative action.*

15 **SEC. 16. EVALUATION AND REPORT BY THE COMPTROLLER**

16 **GENERAL.**

17 (a) *STUDY.*—Not later than 5 years after the date of
 18 *enactment of this Act, the Comptroller General of the United*
 19 *States shall evaluate the implementation and administra-*
 20 *tion of this Act, including—*

21 (1) *an estimate of the gains in economic effi-*
 22 *ciency made possible from check truncation;*

23 (2) *an evaluation of the benefits accruing to con-*
 24 *sumers and financial institutions from reduced trans-*
 25 *portation costs, longer hours for accepting deposits for*

1 *credit within 1 business day, the impact of fraud*
 2 *losses, and an estimate of consumers' share of the*
 3 *total benefits derived from this Act; and*

4 *(3) an assessment of consumer acceptance of the*
 5 *check truncation process resulting from this Act, as*
 6 *well as any new costs incurred by consumers who had*
 7 *their original checks returned with their regular*
 8 *monthly statements prior to the date of enactment of*
 9 *this Act.*

10 *(b) REPORT TO CONGRESS.—Not later than 5 years*
 11 *after the date of enactment of this Act, the Comptroller Gen-*
 12 *eral shall submit a report to Congress concerning the find-*
 13 *ings and conclusions of the Comptroller General in connec-*
 14 *tion with the evaluation conducted pursuant to subsection*
 15 *(a), together with such recommendations for legislative and*
 16 *administrative action as the Comptroller General may de-*
 17 *termine to be appropriate.*

18 **SEC. 17. VARIATION BY AGREEMENT.**

19 *(a) SECTION 8.—Any provision of section 8 may be*
 20 *varied by agreement of the banks involved.*

21 *(b) NO OTHER PROVISIONS MAY BE VARIED.—Except*
 22 *as provided in subsection (a), no provision of this Act may*
 23 *be varied by agreement of any person or persons.*

1 **SEC. 18. EFFECTIVE DATE.**

2 *Except as otherwise specifically provided in this Act,*
3 *this Act shall become effective 12 months after the date of*
4 *enactment of this Act.*

Attest:

Secretary.

108TH CONGRESS
1ST SESSION

H. R. 1474

AMENDMENT